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8
9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**
11

12
13 PETITION TO AMEND) Supreme Court No. R-08-0007
14 RULES 16.1(b) and 16.4(a),)
15 ARIZONA RULES OF) Comments of the State Bar
16 CRIMINAL PROCEDURE) of Arizona
17 _____)
18

19 The State Bar of Arizona, pursuant to Rule 28(D), Arizona Rules of the
20 Supreme Court, files the following comment regarding petition R-08-0007,
21 which seeks to amend Criminal Rules 16.1(b) and 16.4(a).

22 The State Bar supports the intent of the petition to address
23 inconsistencies in the existing rules and facilitate criminal proceedings, but
24 recommends one further substantive amendment to Criminal Rule 16.1(b) and
25 several administrative corrections to the proposed rules. The proposed
substantive amendment and administrative corrections are set forth in Exhibit
A, attached hereto. The State Bar's proposed administrative changes address
apparent typographical errors and/or inadvertent omissions in drafting the
proposed rules. The State Bar's proposed administrative changes would not
alter the substance of the proposed rules.

The proposed changes are reflected in Exhibit A using double

1 underlines for additions and double strikethroughs for deletions. Exhibit A
2 also includes the petitioner's original proposed language, with additions and
3 deletions shown as they were in the original petition (additions were
4 highlighted and deletions were shown with single strikethroughs).

5 Summary of Substantive Additions

6 The petition indicates an omnibus hearing may be appropriate following
7 a prosecutor's initial disclosure pursuant to Criminal Rule 15.1(c) (as stated
8 below, it appears the petition incorrectly referred to Rule 15.1(e)). The
9 petitioner's president, Dana P. Hlavac (who signed the Rule 28 petition),
10 informed bar counsel that an omnibus hearing may also be appropriate
11 following a prosecutor's additional disclosure pursuant to Criminal Rule
12 15.1(e). Therefore, State Bar recommends that Rule 16.1(b) be amended to
13 permit the parties to request an omnibus hearing following disclosure
14 pursuant to Rule 15.1(c) or (e). The inclusion of both provisions will allow
15 the parties to request an omnibus hearing at the most appropriate time during
16 the proceedings.

17 Summary of Administrative Corrections

18 The petitioner's reference in the petition and proposed Rule 16.1(b) to
19 Criminal Rule 15.1(e), rather than Rule 15.1(c), appears inadvertent. The
20 petition states, "Rule 15.1(e) allows the prosecution 30 days after the
21 arraignment to comply with its requirement under Rule 15.1(b)." It is
22 Criminal Rule 15.1(c), however, and not Rule 15.1(e), that requires disclosure
23 within 30 days after arraignment. Therefore, the reference to Rule 15.1(e) in
24 proposed Criminal Rule 16.1(b) should be changed to Rule 15.1(c).

25 Other administrative corrections to Rule 16.1(b) include the following:

1 "party" needs to be inserted after "opposing" in the second sentence; Rule
2 16.1(b) should consist of two paragraphs, as is the case in the current rule;
3 and "Court" near the end of the next to last sentence should be changed to
4 "court," which is how it appears in the current rule.

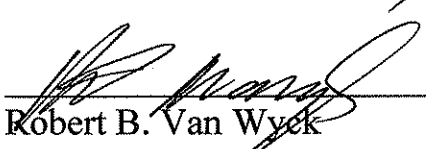
5 Proposed Criminal Rule 16.4(a) also requires some administrative
6 corrections: "hearing" needs to be inserted after "omnibus" in the first
7 sentence; a comma needs to be inserted after "Rule 16.1(b)"; and an
8 inadvertent space after "counsel" needs to be deleted.

9 Conclusion

10 The State Bar recommends the Court amend Criminal Rules 16.1(b) and
11 16.4(a), as set forth above and in Exhibit A, attached hereto.

12 Bar Counsel spoke with the petitioner's president, Dana P. Hlavac,
13 regarding the State Bar's proposed changes. Mr. Hlavac gave bar counsel
14 permission to state he concurs with the State Bar's recommendations.

15 RESPECTFULLY SUBMITTED this 6th day of May,
16 2008.

17 
18 Robert B. Van Wyck
19 Chief Bar Counsel
20 STATE BAR OF ARIZONA

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22 Electronic copy filed with the
23 Clerk of the Supreme Court of Arizona
24 this 6th day of May, 2008.

25 by: Kathleen A. Lundgren

EXHIBIT A
(to State Bar's Response)

Rule 16.1. General provisions

- a. [No change]
- b. **Making of Motions Before Trial.** All motions shall be made no later than 20 days prior to trial, or at such other time as the court may direct. The opposing party shall have 10 days within which to file a response, unless the opposing party waives response. Lack of jurisdiction may be raised at any time.

An omnibus hearing will be held only if affirmatively requested in writing by either or both parties within ~~30~~⁴⁵ days of the date of arraignment in the Superior Court, ~~or 10 days after receipt of disclosure required by Rule 15.1(ec), whichever is later, or 10 days after receipt of disclosure required by Rule 15.1(e), or as ordered by the Court on its own motion.~~ The omnibus hearing shall be set at the earliest convenient date following the filing of the request but no later than 20 days prior to the trial date.

- c. [No change]
- d. [No change]

Rule 16.4. Mandatory prehearing conference

- a. **Timing and Scope of Conference.** No later than ~~25~~⁴⁵ days after the arraignment ~~or at the time set for an omnibus hearing, if an omnibus hearing has been affirmatively requested pursuant to Rule 16.1(b),~~ counsel for the parties, or a defendant if he or she is not represented by counsel, shall settle as many issues in the case as

possible, and shall notify the court in writing of all issues which remain in dispute. This notification shall be filed no later than 3 days after the conference. A jointly prepared omnibus hearing form may be filed with the notification.

- b.** [No change]
- c.** [No change]
- d.** [No change]